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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/799,815

Filing Date: March 12, 2004

Appellant(s): MERBOTH ET AL.

Matthew C. Dooley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/9/2008 appealing from the Office action
mailed 8/19/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2004/0023622	Mantha et al.	2-2004
2003/0125039	Lachtar et al.	7-2003

2004/0253928	Jeon et al.	12-2004
2001/0016503	Kang	8-2001
2003/0022639	Hongo et al.	1-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6, 13, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mantha et al. (US Pat Appl# 2004/0023622) in view of Lachtar et al. (US Pat Pub# 2003/0125039).

Regarding claim 1, Mantha et al. system for allocating power teaches a device for allocating power comprising a power sharing module configured to receive a plurality of signals corresponding to at least one predicted power allocation (Sections 0015-0017 and 0080 or 105 of Fig. 4) and at least one current power allocation 110 and 115 (Fig. 4) and to determine from the plurality of signals whether a first industry standard (Section 0048) wireless system (voice service) corresponding to a first wireless service has un-utilized transmission power 115 and 120 (Fig. 4); and a scheduler configured to receive an indication to allocate the un-utilized transmission power from the first

wireless service of the first industry standard (Section 0048) wireless system to the second wireless service of a second industry standard (Section 0048) wireless system (data service) and utilize the indication to allocate the un-utilized transmission power for the second wireless service 125 (Fig. 4, Sections 0008-0010 and 0057-0069). Mantha fails to teach a first and second industry standard wireless system.

Lachtar teaches a first industry standard wireless system 104, 108A/B, and 110A/B (Fig. 1) and a second industry standard wireless system 106, 112A/B, and 114A/B (Fig. 1); and wherein the first industry standard wireless system and the second industry standard wireless system are distinct industry standard wireless systems (both BTS 108A and 108B or 110A and 110B [Fig. 1] are separate which therefore are distinct industry standard wireless systems since they have different coverage areas etc.).

Note, Lachtar deals with allocation (Figs. 1 and 2) between two systems (applicant does not state the two systems are specifically different, ex. CDMA2000 1x for the first and CDMA 2000 1x EVDO for the second) which is similar to applicant's invention of power allocation.

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a first and second industry standard wireless system as taught by Lachtar into Mantha's power allocating system in order to reduce failures (Sections 0007-0008).

Regarding claim 6, the combination including Mantha teaches wherein the power sharing module provides the scheduler with the indication to allocate the un-utilized

transmission power within a 2 power control group interval (Sections 0008-0010 and 0057-0069).

Regarding claim 13, Mantha et al. teaches providing a first wireless system (voice service, V sub 1 to V sub V of Fig. 1) and a second wireless system (data service, D sub 1 to D sub z of Fig. 1) for a plurality of wireless units 44 and 48 (Fig. 1); obtaining a plurality of input signals corresponding to a plurality of predicted transmission power allocations (Sections 0015-0017 and 0080 or 105 of Fig. 4) and a plurality of current transmission power allocations 110 and 115 (Fig. 4); determining from the plurality of input signals whether the second wireless system may utilize transmission power from the first wireless system 110 and 115 (Fig. 4); and allocating transmission power to the second wireless from the first wireless system for at least one communication channel based on an indication of transmission power that is un-utilized by the first wireless service system 110, 115, 120, and 125 (Fig. 4, Sections 0008-0010 and 0057-0069). Mantha fails to teach a first and second industry standard wireless system.

Lachtar teaches a first industry standard wireless system 104, 108A/B, and 110A/B (Fig. 1) and a second industry standard wireless system 106, 112A/B, and 114A/B (Fig. 1) and wherein the first industry standard wireless system and the second industry standard wireless system are distinct industry standard wireless systems (both BTS 108A and 108B or 110A and 110B [Fig. 1] are separate which therefore are distinct industry standard wireless systems since they have different coverage areas etc.). Note, Lachtar deals with allocation (Figs. 1 and 2) between two systems (applicant does

not state the two systems are specifically different, ex. CDMA2000 1x for the first and CDMA 2000 1x EVDV for the second) which is similar to applicant's invention of power allocation.

Regarding claim 17, the combination including Mantha teaches wherein the plurality of wireless units comprises a plurality of cellular telephones (Sections 0046-0047).

Regarding claim 18, the combination including Mantha teaches wherein the plurality of wireless units comprises at least one portable computer system (Sections 0046-0047).

Regarding claim 19, Mantha et al. teaches receiving a plurality of input signals corresponding to at least one predicted power allocation (Sections 0015-0017 and 0080 or 105 of Fig. 4) for a first wireless system (voice service, $V_{sub 1}$ to $V_{sub V}$ of Fig. 1) and at least one current power allocation for the first wireless service system 110 and 115 (Fig. 4) and a second wireless system (data service, $D_{sub 1}$ to $D_{sub z}$ of Fig. 1); determining from the plurality of input signals whether non-utilized transmission power from the first wireless system may be allocated to the second wireless system 110 and 115 (Fig. 4); and providing an indication to allocate non-utilized transmission power from the first wireless system to the second wireless system to a scheduler 110, 115, 120, and 125 (Fig. 4, Sections 0008-0010 and 0057-0069). Mantha fails to teach a first and second industry standard wireless system.

Lachtar teaches a first industry standard wireless system 104, 108A/B, and 110A/B (Fig. 1) and a second industry standard wireless system 106, 112A/B, and

114A/B (Fig. 1) and wherein the first industry standard wireless system and the second industry standard wireless system are distinct industry standard wireless systems (both BTS 108A and 108B or 110A and 110B [Fig. 1] are separate which therefore are distinct industry standard wireless systems since they have different coverage areas etc.).

Note, Lachtar deals with allocation (Figs. 1 and 2) between two systems (applicant does not state the two systems are specifically different, ex. CDMA2000 1x for the first and CDMA 2000 1x EVDV for the second) which is similar to applicant's invention of power allocation.

Regarding claim 20, the combination including Mantha teaches the act of allocating the non-utilized transmission power based on the indication to allocate non-utilized transmission power from the first wireless system to the second wireless system for transmissions to a wireless unit (Sections 0008-0010 and 0057-0069). Mantha fails to teach a first and second industry standard wireless system.

Lachtar teaches a first industry standard wireless system 104, 108A/B, and 110A/B (Fig. 1) and a second industry standard wireless system 106, 112A/B, and 114A/B (Fig. 1).

3. Claims 2-5, 14-16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mantha et al. (US Pat Appl# 2004/0023622) in view of Lachtar et al. (US Pat Pub# 2003/0125039) and further in view of Jeon et al. (US Pat Appl# 2004/0253928).

Regarding claim 2, Mantha et al. system for allocating power in view of Lachtar teaches the limitations in claim 1. Mantha and Lachtar fails to teach the first wireless service having CDMA200 1x service.

Jeon et al. power allocation method and apparatus for providing packet data service in mobile communication system teaches a wireless service comprises a CDMA2000 1x service (Section 0091).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate CDMA200 1x service as taught by Jeon et al. into a first and second industry standard wireless system as taught by Lachtar into Mantha et al. system for allocating power in order to improve performance (Sections 0015-0016).

Regarding claim 3, Jeon further teaches a 1x system (Section 0091).

Regarding claim 4, Jeon further teaches a wireless service comprises a CDMA2000 1x evolution data and voice (EVDV) service (Section 0004).

Regarding claim 5, Jeon further teaches wherein the second industry standard wireless system comprises an EVDV system.

Regarding claim 14, Jeon further teaches a first industry standard wireless system comprises a CDMA2000 1x service (Section 0091).

Regarding claim 15, Jeon teaches a wireless system comprises a CDMA2000 1x evolution data and voice (EVDV) service system (Section 0004).

Regarding claim 16, Mantha further teaches transmitting the at least one communication channel to at least one of the second portion of the plurality of wireless units (Sections 0044-0053).

Regarding claim 21, Jeon further teaches a wireless service comprises a CDMA2000 1x evolution data and voice (EVDO) communication channel (Section 0004).

4. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mantha et al. (US Pat Appl# 2004/0023622) in view of Lachtar et al. (US Pat Pub# 2003/0125039) and further in view of Kang (US Pat Appl# 2001/0016503).

Regarding claim 8, Mantha et al. system for allocating power teaches a first baseband (voice service) system that communicates with a first group of the plurality of wireless units 44 (Fig. 1) via a first plurality of communication channels (Fig. 1, V sub 1 to V sub V); and a second baseband system (data service, D sub 1 to D sub z of Fig. 1) that communicates with a second group of the plurality of wireless units 48 (Fig. 1) via a second plurality of communication channels, the first and second baseband systems sharing a platform 24 and 40 (Fig. 1, voice and data systems coming from the same base station) the second baseband system comprising a power sharing module configured to receive a plurality of signals corresponding to a plurality of predicted power allocation (Sections 0015-0017 and 0080 or 105 of Fig. 4) and a plurality of current power allocations 110 and 115 (Fig. 4) and to determine from the plurality of signals whether the second baseband system may allocate power from the first baseband system 110 and 115 (Fig. 4); and a scheduler configured to receive an

indication to allocate un-utilized transmission power to the second baseband system from the first baseband system and to utilize the indication to allocate un-utilized transmission power for the second plurality of communication channels 110, 115, 120, and 125 (Fig. 4, Sections 0008-0010 and 0057-0069). Mantha fails to teach a first and second industry standard wireless system and a channel card.

Lachtar teaches a first industry standard wireless system 104, 108A/B, and 110A/B (Fig. 1) and a second industry standard wireless system 106, 112A/B, and 114A/B (Fig. 1) and wherein the first industry standard wireless system and the second industry standard wireless system are distinct industry standard wireless systems (both BTS 108A and 108B or 110A and 110B [Fig. 1] are separate which therefore are distinct industry standard wireless systems since they have different coverage areas etc.).

Note, Lachtar deals with allocation (Figs. 1 and 2) between two systems (applicant does not state the two systems are specifically different, ex. CDMA2000 1x for the first and CDMA 2000 1x EVDO for the second) which is similar to applicant's invention of power allocation.

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a first and second industry standard wireless system as taught by Lachtar into Mantha's power allocating system in order to reduce failures (Sections 0007-0008).

Mantha and Lachtar fail to teach a channel card.

Kang's CDMA base station system teaches a radio frequency system having a channel card 103 (Fig. 1) configured to communicate with a plurality of wireless units 111 and 112 (Fig. 1).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a channel card as taught by Kang into a first and second industry standard wireless system as taught by Lachtar into Mantha et al. system for allocating power in order to minimize the deterioration of the call quality in a CDMA system (Section 0020).

Regarding claim 10, Kang further teaches wherein the channel card comprises at least one transceiver 104 and 105 (Fig. 1) configured to communicate with the plurality of wireless units 111 and 112 (Fig. 1).

5. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mantha et al. (US Pat Appl# 2004/0023622) in view of Lachtar et al. (US Pat Pub# 2003/0125039) and further in view of Kang (US Pat Appl# 2001/0016503) and further in view of Hongo et al. (US Pat Appl# 2003/0022639).

Regarding claim 9, Mantha et al. system for allocating power in view of Lachtar and further in view of Kang's CDMA base station system teaches the limitations in claim 8. Mantha, Lachtar, and Kang fail to teach determining a power average and instant power of a signal.

Hongo et al. peak limiter and multi-carrier amplification apparatus teaches a power system that determines a radio frequency output power average 11 (Fig. 3) and an instant radio frequency power 12 (Fig. 3).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate determining a power average and instant power of a signal as taught by Hongo et al. into a channel card as taught by Kang into a first and second industry standard wireless system as taught by Lachtar into Mantha et al. system for allocating power in order to enhance the power efficiency (Section 0031).

6. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mantha et al. (US Pat Appl# 2004/0023622) in view of Lachtar et al. (US Pat Pub# 2003/0125039) and further in view of Kang (US Pat Appl# 2001/0016503) and further in view of Jeon et al. (US Pat Appl# 2004/0253928).

Regarding claim 11, Mantha et al. system for allocating power in view of Lachtar and further in view of Kang's CDMA base station system teaches the limitations in claim 8. Mantha, Lachtar and Kang fail to teach a CDMA2000 1x service.

Jeon et al. power allocation method and apparatus for providing packet data service in mobile communication system teaches a wireless systm comprises a CDMA2000 1x service (Section 0091).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate CDMA200 1x service as taught by Jeon et al. into a channel card as taught by Kang into a first and second industry standard wireless system as taught by Lachtar into Mantha et al. system for allocating power in order to improve performance (Sections 0015-0016).

Regarding claim 12, Jeon et al. further teaches a wireless system comprises a CDMA2000 1x evolution data and voice (EVDV) service (Section 0004).

Allowable Subject Matter

7. Claims 7 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Appellant's arguments with respect to claims 1-6 and 8-21 have been fully considered but they are not persuasive.

(A) The appellant argued that "the Examiner must establish, based on objective evidence of record, reasons supporting a conclusion as to the combinability of the references in making an obviousness rejection." (Ground of Rejection No. 1, Claims 1, 13, and 19)

In response to the argument (A), the examiner respectfully disagrees with the appellant argument. Both Lachtar and Mantha teaches allocating power between units in a communication system (Fig. 4 of Mantha and Fig. 2 of Lachtar). Therefore, it is just simple substitution of Lachtar's power allocation of two distinct wireless systems into Mantha's power allocation system to obtain predictable results. Clearly, it is reasonable to combine the two references together.

(B) The appellant argued that "contrary to the assertion of the Examiner, multiple base station controllers, as set forth in Lachtar, each utilizing a single industry standard wireless system in distinct coverage areas cannot reasonably be considered to be the

same as a first industry standard wireless system and a second industry standard wireless system as distinct industry standard wireless systems, as recited in independent claims 1, 13, and 19." (Ground of Rejection No. 1, Claims 1, 13, and 19)

In response to the argument (B), the examiner respectfully disagrees with the appellant argument. Examiner believes appellant is reading more into the claim than is present. The claim language only states "wherein the first industry standard wireless system and the second industry standard wireless system are distinct industry standard wireless systems." Based on the broadest interpretation of the claim, Lachtar teaches a first industry standard wireless system 108A/B (Fig. 1, first BTS) and a second industry standard wireless system 110 A/B (Fig. 1, second BTS). BTS 108A/B and 110A/B are two distinct industry systems since they communicate with different mobile units 130 vs. 134 (Fig. 1) and have distinct coverage areas to communicate 120B vs. 122B (Fig. 1).

The appellant does not state how the first and second systems are distinct in the claim language and in the appellant arguments again they avoid the issue of stating how the first and second systems are distinct. The appellant merely only states that Lachtar and Mantha does not teach two distinct systems without stating how or what it is distinct based on their claim language (Pages 13-15). Note, examiner has welcomed the appellant to amend the limitation to further define the term distinct.

(C) The appellant argued that "As such, there is no teaching in the Lachtar reference that suggests allocating, i.e. sharing, of power of between the distinct systems." (Ground of Rejection No. 1, Claims 1, 13, and 19)

In response to the argument (C), the examiner respectfully disagrees with the appellant argument. In figure 2 of Lachtar it teaches power allocation between two distinct base stations (BTS) (i.e. 108A/B vs. 110A/B in figure 1) based on capacity information 208 (Fig. 2) in determining for which base station for the mobile unit to communicate with 210-212 (Fig. 2). Lachtar clearly teaches power allocation between distinct base stations.

(D) The appellant argued that “Appellants allege that allocating a power budget between at least two communication services cannot reasonably be considered the same as allocating the un-utilized transmission power within a 2 power control group interval.” (Ground of Rejection No. 1, Claim 6)

In response to the argument (D), the examiner respectfully disagrees with the appellant argument. Mantha teaches 2 power control groups (voice service and second data services, section 0048) and done in intervals (Section 0060, time periods). Again, examiner believes appellant is reading more into the claim than present.

(E) The appellant argued that “Therefore, the Examine must establish, based on objective evidence of record, reasons supporting a conclusion as to the combinability of the references in making an obviousness rejection.” (Grounds of Rejection No. 2, claim 8).

In response to the argument (E), the examiner respectfully disagrees with the appellant argument. Mantha, Lachtar, and Kang teaches base stations (Fig. 1 of Kang, elements 108A/B, 110A/B, 112A/B, and 114A/B from figure 1 of Lachtar, and element 36 from figure 1 of Mantha) in a wireless communication system. Therefore it is simple

substitution to include a channel of Kang base station into Mantha's and Lachtar's base stations to obtain predictable results.

(F) The appellant argued that "Specifically, the Lachtar reference does not overcome the admitted deficiencies of the Mantha reference. In particular, neither the Mantha reference nor the Lachtar reference disclose a scheduler configured to receive an indication to allocate un-utilized transmission power to the second baseband system from the first baseband system and to utilize the indication to allocate un-utilized transmission power for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are distinct baseband systems." (Grounds of Rejection No. 2, claim 8)

In response to the argument (F), the examiner respectfully disagrees with the appellant argument. See responses (B) and (C).

(G) The appellant argued that "Accordingly, Appellants respectfully assert that the Jeon reference fails to remedy the deficiencies of the Mantha and Lachtar references with respect to the features of independent claims 1, 13, and 19." (Grounds of Rejection No. 3, claims 2-5, 14-16, and 21).

In response to the argument (G), the examiner respectfully disagrees with the appellant argument. See responses (B) and (C).

(H) The appellant argued that "Furthermore, Appellants assert that the Hongo reference does not overcome the deficiencies of the Mantha, Lachtar, or Kang references with respect to claim 8. Specifically, Hongo does not disclose wherein the

first baseband system and the second baseband system are distinct baseband systems.” (Ground of Rejection No. 4, claim 9).

In response to the argument (H), the examiner respectfully disagrees with the appellant argument. See responses (B) and (C).

(I) The appellant argued that “Accordingly, Appellants respectfully assert that the Jeon reference fails to remedy the deficiencies of the Mantha, Lachtar, and Kang references with respect to the features of independent claim 8.” (Grounds of Rejection No. 5, claims 11 and 12).

In response to the argument (I), the examiner respectfully disagrees with the appellant argument. See responses (B) and (C).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andrew Wendell/

Examiner, Art Unit 2618

Conferees:

/Nay A. Maung/

Supervisory Patent Examiner, Art Unit 2618

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